Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1997

CLIFF GREENE, pro se,

Petitioner,

v.

CITIBANK, N.A., CITIGOLD, CITICORP INVESTMENT SERVICES, BHC SECURITIES INC., CITIBANK'S AGENT, AND CITIGOLD,

Respondents.

Petition For Writ Of Certiorari

To The United States Court Of Appeals

For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the United States District Court, Eastern District of New York, (EDNY) Brooklyn, Sterling Johnson, Jr., presiding, committed prejudicial error when it granted defendant's 12(b)(6) motion to dismiss plaintiff's complaint and motion in opposition; without a hearing.

2. Whether the District Court, committed reversible error when it ruled that Citibank, N.A., a defendant, a corporation, incorporated under the laws of the state of New York, conducts its banking and securities businesses under color of laws of the state of New York; was not an actor of the state of New York. (Re: Sec. 1983 claims).

3. Whether the District Court, committed reversible error when it failed to rule that New York State's Longarm statute, gives the court diversity, supplemental and personal jurisdiction over out of state defendant, BHC Securities, Inc., pursuant to rule 4(e) Fed.R. Civ. p., and 28 U.S.C. Sec. 1332.

TABLE OF CONTENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Page

OPINIONS BELOW 2

JURISDICTION 3

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 8

REASONS FOR GRANTING THE WRIT 13

CONCLUSION 29

INDEX TO APPENDICES

APPENDIX A Opinion of the Court of Appeals for the Second Circuit (1997) Unreported in Cliff Greene v. CITIBANK, N.A., CITIGOLD, CITICORP INVESTMENT SERVICES, BHC SECURITIES INC., CITIBANK'S AGENT, AND CITIGOLD A-1

INDEX TO APPENDICES (cont'd)

APPENDIX B Opinion of the District Court for the Eastern District of New York (1996).....B-1

APPENDIX C Judgment of the District Court for the Eastern District of New York (Filed Dec. 19, 1996).....C-1

APPENDIX D Court of Appeals denial of the petition for rehearing (issued October 16, 1997)..... D-1

APPENDIX E Amendment XIV to the United States Constitution E-1

APPENDIX F Corporate Defendants, 1- Citibank, N.A., Inc., 2- BHC Securities, Inc., and, their states of incorporation.....F-1

INDEX TO APPENDICES (cont'd)

APPENDIX G Citibank, N.A. Inc., customers proof of claims, (two (2) of five (5) filed on behalf of Citibank, N.A. Pilgrim Mutual Fund customers, in Drexel Burnham Lambert, Inc., bankruptcy proceedings..... G-1 (claims numbers–00006735 and 00006740).

TABLE OF AUTHORITIES

Cases: **Page(s)**

Stevens v. Frick, 372 F. 2d 378,

381(2d Cir.), Cert. denied, 387 U.S. 920

(1967); Anderson v. Moses 185 F. supp. 727, 731

(S.D.N.Y. 1960) 22,24,

Screws v. United States, 325 U.S. 91 (1995); Exparte

Virginia, 100 U.S. 339 (1880).....22,

Risely, 173 F. aT 507 (Citing United States v. classic,

313 U.S. 299 (1941); Screws v. United States,

325 U.S. 91 (1945); EX parte Virginia,

100 U.S. 339 (1880).....22,

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Stone V. Chelan County Sheriff's

Dept., Wash. 1988, 756 p. 2d, 110 wash

2d 806 5,

Box all v. sequoia Union High School Dist.,

D.C. Cal. 1979, 464 F. Supp. 1104 5,25,6

Erskine v. Upham, 56 Cal. App. 2d 235, 132 p. 2d 219,

228; Trepanier v. Standard Min. & Mill Co.,

58 Wyo. 29 123 p. 2d 378, 380 (1942) 7,18,

State v. Gilcrist, 15 Wash. App. 892, 552,

p. 2d 690, 693 (1976) 8,18,

Kaufman v. Board of Trustees, Community College Dist.,

No. 508, 552 F. Supp 1143 (D.C. III., 1982) 5,

TABLE OF AUTHORITIES (cont'd)

Risely v. City of Utica, 173 F. 502, 507 (N.D.N.Y. 1909),.....21,

Appeal Dismissed, 177 F. 1005 (2d cir. 1910); See Perez v.

Sugarman, 499 F. 2d 761, 764 (2d cir. 1974).....21,

See Lief v. Hynes, 1979, 98 Misc. 2d 817,

414 N.Y.S. 2d 855.....4,

See also, people v. Reilly, 1976, 85 Misc. 2d 702,

381 N.Y.S.....4,

Jackson v. Metropolitan Edison Co., 419 U.S.

345, 350 (1974).....24,

See Dolese V. United States (1976, CA 10 okla)

541 F 2d 853, 76-2 USTC par. 9635, 38 AFTR

2d 76-5769, later app (CA 10 okla) 605 F 2d 1146,

79-2 USTC par. 9540, 44 AFTR 2d 79-5552, reh dew,

(CA 10 okla) 80-2 USTC par. 9731, 44 AFTR 2d

79-5724 2nd Cert den 445 US 961, 64 L Ed 2d 236,

100 S CT 1647.....15,17,

TABLE OF AUTHORITIES (cont'd)

Breithaupt v. Abram, 77 S.Ct. 408, 352 U.S. 432, 1

L.Ed.2d 448 (N.M. 1957) 6,

Constitutional Provisions:

14. Amend. to United States Const. 2,3,8,21,

14. Amend. Sec. I Notes 3, 14 and 64.....4,5,

New York State, Const. Bill of Rights,

Art. I, Sec. II Note II..... 3,4,21,

Statutes:

42 U.S.C. SEC. 1983 6,8,9,18,19,21,25,

28 U.S.C. SEC. 1391-(C) 26,

28 U.S.C. SEC. 1331 27,

28 U.S.C. SEC. 1332 26,27,28,

28 U.S.C. SEC. 1254(1) 3,

TABLE OF AUTHORITIES (cont'd)

Fed. R. Civ. P.:

Fed. R. Civ. P. 12(b)(6) 2,7,8,13,14,17,18,

Fed. R. Civ. P. 4 and 4(e)..... 26,27,

Fed. R. Civ. P. 59..... 8,18,

Fed. R. Civ. P. 56..... 7,13,14,15,17,18,

Rules of the U.S. Supreme Court

Rule 10, U.S. Supreme Court..... 17

Rules-Securities exchange act of 1934

Rule 15c 1-2..... 10,

Rules 17a - 3 and 17a - 4 - Regulations T and X 26,

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To The United States Court Of Appeals

For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner, Cliff Greene, pro se, respectfully prays that a Writ of Certiorari issue to review the judgment and Opinion of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit on August 14, 1997, Order # 97-7036, and, its denial of petitioner's petition for rehearing on October 16, 1997, is unreported and is printed here at Appendix "A-1" and "D-1".

The memorandum and order of the United States District Court for the Eastern District of New York granting of the defendant's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) is also unreported and is reprinted here as Appendix "B-1".

In addition, the District Court's judgment, Amendment XIV to the United States Constitution, corporate defendants, 1- Citibank, N.A., Inc., 2- BHC Securities, Inc., and their states of incorporation, also, Citibank, N.A., Inc., customers proof of claims, (two (2) of five (5) filed on behalf of Citibank, N.A., Pilgrim Mutual Fund customers, in the Drexel Burnham Lambert, Inc., bankruptcy proceedings; (Claims numbers–00006735 and 00006740). are reprinted here as Appendices "C-1", "E-1", "F-1", and "G-1", respectively.

JURISDICTION

The judgment of the Court of Appeals for the Second Circuit that denied petitioner's petition for rehearing was entered on October 16, 1997. The Petition for Certiorari was filed within 90 days of that date. This court's jurisdiction is invoked under 28 U.S.C. SEC. 1254 (1).

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

Amendment XIV to the United States Constitution is set forth in Appendix "E-1".

STATE OF NEW YORK, BILL OF RIGHTS

Articles 1, Section II

Art. 1, Sec. II [Equal Protection of Laws; discrimination in civil rights prohibited]. No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion be subject to any discrimination in his civil rights by any other person or by any firm, corporation, or

institution or by the State or any agency or subdivision of the state.

Article I, Section 11, Note 11.

Essence of the right to equal protection of the laws is that all persons similarly situated be treated alike and that no person or class of persons shall be denied equal protection of the laws which is enjoyed by others in similar circumstances; rule is that equal protection of the laws is not denied when all persons are treated alike under the circumstances and conditions, both in privileges conferred and liabilities imposed. See Lief v. Hynes, 1979, 98 Misc. 2d 817, 414 N.Y.S. 2d 855. See also, People v. Reilly, 1976, 85 Misc. 2d 702, 381 N.Y.S.

14 Amend. Sec. 1 notes 3 and 14, makes it crystal clear that persons similarly situated may not be treated differently.

14 Amend, Sec. 1 Note 3 - Equal Protection Clause

Persons similarly situated

Denial of equal protection may occur when valid law is administered in a manner that unjustly discriminates

between similarly situated persons. See Stone v. Chelan County Sheriff's Dept., Wash. 1988, 756 p. 2d, 110 Wash. 2d 806.

Under this section of the 14. Amend. governing civil action for deprivation of rights, plaintiff can generally sue to enforce statutory rights as well as constitutional rights. See Boxall v. Sequoia Union High School Dist., D.C. Cal. 1979, 464 F. Supp. 1104.

14. Amend Sec. Note 14 - Equal Protection Clause

Persons similarly situated

In context of allegation that similarly situated persons have been treated differently, substantive due process considerations are virtually coextensive with equal protection guarantees of this amendment. See Kaufman v. Board of Trustees, Community College Dist. No. 508, D.C. Ill. 1982. 552 F. Supp. 1142.

Fairness of Justice – Amend. 14, Sec. 1 Note 64

Due process is not measured by the yardstick of personal reaction or the sphygmogram of the most sensitive person, but by that whole community sense of decency and fairness

that has been woven by common experience into the fabric of acceptable conduct.

Breithaupt v. Abram, 77 S.Ct. 408, 352 U.S. 432, 1 L.Ed.2d 448 (N.M. 1957).

STATUTES AND RULES INVOLVED

42. U.S.C. Sec. 1983

Sec. 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory, subject, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Under this section governing civil action for deprivation of rights, Plaintiff can generally sue to enforce federal statutory rights as well constitutional rights. *Boxall v. Sequoia Union High School Dist.*, 464 F. Supp. 1104 (D.C. Cal. 1979).

Fed. R. Civ. P. 12(b)(6)

...if, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

District Court, Eastern District of New York, (EDNY) (Brooklyn), Judge Sterling Johnson, Jr., presiding, committed prejudicial error when it dismissed plaintiff's complaint and its amendments, pursuant to Federal Rule of Civil procedure 12(b)(6) for failure to state a claim upon which relief can be granted; without a hearing. And, without ruling on plaintiff's submitted motion for judicial consideration.

PREJUDICIAL ERROR

Error substantially affecting appellant's legal rights and obligations. *Erskine v. Upham*, 56 Cal. App. 2d 235, 132 P.2d 219, 228 (1942); *Trepanier v. Standard Min. & Mill. Co.*, 58 Wyo. 29, 123

P.2d 378, 380 (1942). Such may be grounds for new trial and *reversal of judgment*. Fed. R. Civ. P. 59. A prejudicial error is one which affects or presumptively affects the final results of the trial. *State v. Gilcrist*, 15 Wash. App. 893, 552 P.2d 690, 693 (1976). See also error; plain error rule.

STATEMENT OF CASE

This petition seeks review of an affirmance by the United States Court of Appeals for the Second Circuit of a judgment of the United States District Court for the Eastern District of New York The Court of Appeals "affirm substantially for the reasons set forth" in the District Court "memorandum and order dated December 9, 1996." The basis of the District Court's granting respondent's 12(b)(6) motion was the asserted "absence of any basis for federal jurisdiction....". Petitioner appeared pro se and sued the respondents, CITIBANK, N.A., CITIGOLD, CITICORP INVESTMENT SERVICES, BHC SECURITIES INC., CITIBANK'S AGENT, AND CITIGOLD, for violation of federal rights and common law rights. Petitioner alleged violations of rights under 14. Amend., 42 U.S.C. SEC. 1983, and New York State,

Const. Bill of Rights. Petitioner asserted "Federal Question," along with the above-mentioned constitutions and statute, as the basis for Federal Court Jurisdiction. Based on misconstruction of petitioner's complaint, the District Court found that there were "no grounds for maintaining Federal Jurisdiction."

SECTION 1983 CLAIMS

Petitioner has a constitutional protected property right. This right was violated by the Respondents.

The Respondents acting "under the color of New York State laws, filed claims on behalf of its Pilgrim Mutual Fund customers, while on the other hand with scienter failed to file claim on behalf of petitioner–customer. Both customers were similarly situated.

Petitioner contends that the above mentioned, constitute a deprivation of a Federal Constitutional or statutory right giving rise to a federal cause of action. The conclusion by the District Court overlooked the clear language and meaning of 42 U.S.C. SEC. 1983.

Just prior to Bar date 11/15/90, plaintiff inquired of his account executive at Citibank, whether the bank was filing claims for its customers (securities in street name) losses in the Drexel case,

plaintiff was told that it was not, and that customers must file their own claims. Plaintiff, discovered on September 15, 1994, that Citibank, had filed claims for other of its customers, but, neglected to file a claim for this customer. Same, was discovered while researching claim register, as of 04/26/94 --- re: chapter 11 case #90-B-10421, Bankruptcy court, I Bowling Green, New York, N.Y. Same had to do with Drexel Burnham Lambert's Bankruptcy case. See pages 155, 156, 157, and 158 of claim register. It is needless to say that plaintiff was shocked, stunned and felt deceived when he discovered that Citibank had filed customer's claims in the Drexel bankruptcy case, for customers who were similarly situated to plaintiff, but, had neglected to file a claim for him. Plaintiff, was indeed deceived and, he is alleging that the deception later led to fraud. Citibank's information to this customer, about not filing claims for its customer's losses in the Drexel case, was an intentional misrepresentation in violation of rule 15c 1-2 of the securities exchange act of 1934. Petitioner respectfully requests that this court hold the respondents liable for violating a fundamental constitutional right of this complainant --

since this customer was similarly situated to the above mentioned customers, he should not have been treated differently. Citibank should have filed a claim for losses in this customer's securities held in its name; the same as it did for its other customers. It is very hard to conceive that Citibank, N.A. as big as it is, as smart as it is, and as efficient as it is alleged to be, would not file a claim for $522,240.74, in securities losses held in its own name.

PRIMARY CAUSE OF ACTION

Petitioner primary cause of action had to do with defendant, Citibank, N.A., Inc., filing claims on behalf of its Pilgrim Mutual Fund customers, whose securities were held in street name, Citibank's name, by registration. While on the other hand, with scienter, negligently failed to file claim for plaintiff in the chapter 11 bankruptcy proceedings of Drexel Burnham Lambert, Inc., Plaintiff's securities were also held in street name, Citibank's name, by certificate. Since we are similarly situated, plaintiff, should not have been treated differently. District Court failed to rule on plaintiff's primary cause of action. Instead, the District Court, suppressed counsel for the defendants concealment of critical

evidence that supports plaintiff's allegations against defendant; Citibank's filing of claims on behalf of its mutual fund customers. Petitioner contends that Citibank breached its fiduciary contractual agreement with its plaintiff - customer.

NATURE OF ACTION

Defendants, in a conspiracy with others, with scienter, knowingly, willfully, purposefully, intentionally and wantonly concealed from the Court critical, crucial factual material information. Information that would immediately prove to the Court that Plaintiff's allegations that Defendant, Citibank, N.A., did file proof of claims on behalf of others of its customers in the Drexel Burnham Lambert, Inc. ("Drexel") bankruptcy case; and, on the other hand, with scienter, negligently failed to file proof of claim for Plaintiff-Customer. The numbers of the Five (5) Citibank's claims, filed with the United States Bankruptcy Court, Southern District of New York, on November 14, 1990, and submitted to this Court at Appendix G-1, two (2) of the following five (5) numbers are 00006735 and 00006740. 1 - #00006735, 2 - #00006740, 3 - #00006741 4 - #00010351, 5 - #00010352

Respondents excluded supported documents from its filed Proof of Claims with the Bankruptcy Court (SDNY), filing with the District Court (EDNY) only pages 1 and 2 of same. Thereby perpetrating a fraud upon the Court. Petitioner, in his Memorandum of Law, informed the lower courts of this fraudulent act.

REASONS FOR GRANTING THE WRIT

1. The District Court, Eastern District of New York, (EDNY) Judge Sterling Johnson, Jr., presiding, committed prejudicial error when it granted defendants' 12(b)(6) motion to dismiss for failure of the pleading to state a claim upon which relief can be granted; without a hearing on the 12 (b) (6) motion pursuant to Rule 56 of Fed. R. Civ. P.; Nor, was a hearing held on plaintiff's motion in opposition to defendants' 12 (b) (6) motion to dismiss.

Pursuant to Rule 56, Fed. R. Civ. P. a trial judge does not have the authority to grant a 12 (b) (6) motion without a hearing.

Courts are required to treat 12 (b) (6) motions as one for summary judgment. Petitioner contends that it is unconstitutional to dismiss a complaint without a hearing. It deprives plaintiff of a basic fundamental constitutional right, due process. Petitioner's

complaint was dismissed without a hearing. What a travesty of justice. District Court committed reversible error when it dismissed plaintiff's complaint and its amendments, pursuant to Federal Rule of Civil Procedure 12 (b) (6) for failure to state a claim upon which relief can be granted; knowingly, that counsel for the defendants at the commencement of the action, Frances S. Chlapowski, Esq., and his law firm, Orrick, Herrington & Sutcliffe, concealed legal, factual evidence from the court; evidence that supports plaintiff's allegations against defendants. They were crucial legal factual bankruptcy court documents. Plaintiff, respectfully requested that counsel be sanctioned and recommended to the New York State Bar Association for the same. The District Court, Judge Sterling Johnson, Jr., presiding, failed to sanction counsel, instead, the court suppressed the concealment. What a travesty of justice. After the District Court suppressed the above-mentioned concealment, it issued the 12 (b) (6) motion for failure to state a claim upon which relief can be granted. This ruling borders on misconduct and incompetency. Courts are required to treat 12 (b) (6) motions as summary judgment. See Rule 56 Fed. R. Civ. P. below:

Rule 56, Fed. R. Civ. P.

Trial judge has no authority to grant summary judgment where no hearing was held on motion. See Doles v. United States (1976, CA 10 okla) 541 F 2d 853, 76-2 USTC par. 9635, 38 AFTR 2d 79-5552, reh den (CA 10 okla) 80-2 USTC par 9731, 44 AFTR 2d 79-5724 2nd cert den 445 U.S. 961, 64 L.Ed. 2d 236, 100 S. Ct. 1647. Respondents argued in its memorandum of law that Local District Court's Rule 3 permits judges to dismiss a complaint without a hearing. Petitioner argued that Local Court's Rules do not supersede Fed. R. Civ. P. It is petitioner's understanding that the function of the Court is not to resolve disputes between parties—the function of the Court is to determine what issues of fact, if any, are triable.

A 12 (b) (6) motion to dismiss may be dismissed only when there is no sets of issues of facts involved. Petitioner contends that it is a fact that Defendant, Citibank, N.A., filed claims on behalf of others of its customers in the Drexel Burnham Lambert, Inc. bankruptcy case and, with scienter, negligently failed to file claim for Plaintiff-Customer. See Appendix Mark G-1. Reference,

Pilgrim Mutual Fund Shareholders, Accounts #16-24200-0-1 and #16-20985-0-1.

RULES OF THE SUPREME COURT

RULE 10

Petitioner respectfully request that a writ of certiorari be granted pursuant to Rule 10 (a) (c) re: Second Circuit Court of Appeals "has so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by the U.S. District Court (EDNY), Brooklyn, as to call for an exercise of U.S. Supreme Court power of supervision re: herein above-mentioned Rule 56, Fed. R. Civ. P. and 12 (b) (6) violation.

Rule 10 (c), Second Circuit Court of Appeals, has decided a federal question in a way that conflicts with applicable decision of the U.S. Supreme Court. See Dolese v. United States, 100 S. Ct. 1647 re: above-mentioned Rule 56, Fed. R. Civ. P. and 12 (b) (6) violation.

Prejudicial Error

Error substantially affecting appellant's legal rights and obligations. See Erskine v. Upham, 56 Cal. App. 2d 235, 132 P. 2d 219, 228 (1942). Such may be grounds for new trial and reversal of judgment. See Fed. of Civ. P. 59. A prejudicial error is one which affects or presumptively affects the final results of the trial. State v. Gilcrist, 15 Wash. App. 893, 552 P.2d 690, 693 (1976). See also error, Plain Error Rule.

The above-mentioned prejudicial error is in reference to lower court's Rule 56, Fed. R. Civ. P. and 12 (b) (6) violation.

2. The District Court committed reversible error when it ruled that Citibank, N.A., Inc. a defendant corporation incorporated under the laws of the State of New York, was not an actor of the State of New York. Re: Sec. 1983 Claims.

The District Court committed reversible error when on pages 10 an 11 of its memorandum and order, ruled that the defendants did not act under color of state law when it filed customer claims in the Drexel Bankruptcy proceedings. Further, whether the court

committed reversible error when it granted defendant's motion to dismiss the Sec. 1983 claim.

Citibank, N.A., rightfully filed claims on behalf of its Pilgrim Mutual Fund customers as an actor of the State of New York. If it had not done so, the State's Securities Agency, Investors Protection and Securities Bureau, of which it is registered with and licensed by the State as a broker-dealer, would have done so. The issue in this case is Citibank, N.A.'s failure to file a claim on behalf of Petitioner-customer since both customers were similarly situated.

ACTOR OF STATE AND DUE PROCESS

Petitioner contends that the defendants are actors of the state. And, that there is sufficiently close nexus between defendants and state. Further, defendant Citibank, N.A., Inc. is a corporation incorporated under the laws of the State of New York, conducts its business under the color of laws of the State of New York and is under the supervision of the superintendent of banks of the state of New York. Also, conducts its securities business through its subsidiary Citicorp Investment Services, (the second defendant which is registered with the state's securities agency.

Namely, the investors protection and securities bureau, a department of New York State's Attorney General's office, whose function on a state level is the same as the Securities and Exchange Commission (SEC) on a national level.

Citicorp Investment Services is licensed by the state as a broker-dealer, and is supervised by same. How then, could Citibank, N.A., Inc. and its subsidiary not be actors of the State of New York? All of the defendants are "Sui Generis." Their earnings are derived from the power of the state.

There is sufficiently close nexus between the state and the defendants to conclude that they are actors of the state of New York. The third (3) defendant, BHC Securities, is a corporation incorporated under the laws of the State of Delaware, and agent of Citibank, N.A. BHC is also registered with investors protection and securities bureau. Further, it is licensed by the state of New York as a broker-dealer. Therefore, like Citibank, N.A., Inc., and its subsidiary, Citicorp Investment Services, an actor of the state of New York. The very name of the agency imply what it is about. Defendants are an extension of the agency. They supervise their

broker in an effort to prevent wrongdoing. The lack of proper supervision results in injury to the investor. Defendants violated the constitutional and statutory rights (Federal and State) of plaintiff-customer -1- Fourteenth Amendment and 42 U.S.C. 1983, -2- Article I, Section II, Note II, State of New York Bill of Rights.

1. Fourteenth Amendment and Section 1983

It has long been settled that both the Fourteenth Amendment and the Civil Rights Act, 42 U.S.C. Sec. 1983 ("Section 1983") afford protections exclusively against the deprivation of civil rights only as against action of the state, or instrumentalities of the state, and whoever, by virtue of public position under the state "acts for and in the name of the state, and is clothed with the power of the state...." Risely v. City of Utica, 173 F. 502, 507 (N.D.N.Y. 1909), appeal dismissed, 177 F. 1005 (2d Cir. 1910); see Perez v. Sugarman, 499 F.2d 761, 764 (2d Cir. 1974).

Actor of State

"Under color" of law has consistently been treated as congruent to the "state action" required under the Fourteenth Amendment.

Stevens v. Frick, 372 F.2d 378, 381 (2d Cir.), cert. denied, 387 U.S. 920 (1967); Anderson v. Moses, 185 F. Supp. 727, 731 (S.D.N.Y. 1960). To constitute "state action" it must be alleged that the action was taken by an instrumentality of the state under authority of state law. Risely, 173 F. at 507 (citing United States v. Classic, 313 U.S. 299 (1941); Screws v. United States, 325 U.S. 91 (1945); Ex parte Virginia, 100 U.S. 339 (1880))

The lower court relied upon an inapplicable judicial case law in its rulings relating to Citibank, N.A., Inc., its subsidiary, Citicorp Investment Services, and its agent BHC Services, Inc. as not being actors of the State of New York.

Lawyers, licensed to practice law in the State of New York, must first register with the New York State Bar Association. Once found to be qualified, they are then licensed. Also, become an officer of the court. Further, they become actors of the state.

Securities broker-dealers are not unlike lawyers, they are similarly situated. To become a broker-dealer they too must first register with an instrumentality of the state. That state agency is

the Investors Protection and Securities Bureau, a department of the New York State's Attorney General's office.

Broker-Dealers assist this agency in the supervision of stock brokers, in the protection of securities investors in the state of New York , so as to prevent wrongdoing by unscrupulous brokers. They too, once registered and licensed, become actors of the state. Both lawyers as mentioned, herein above and broker-dealers, carry on their professional practice and businesses "Under the color of state law". They are "Sui Generis". Their earning s are derived from the power or authority of the state.

Therefore, petitioner, concludes that the lower court erred in its ruling as same relates to actors of the state.

Citibank, N.A., an actor of the state, rightfully filed claims on behalf of its Pilgrim Mutual Fund customers. Citibank, N.A., Inc., incorporated under the laws of the state of New York, does its securities business through its subsidiary, Citicorp Investment Company, under the supervision of an instrumentality of the state of New York, "Investors Protection and Securities Bureau". In view of the above mentioned, it would be arbitrary and capricious

to conclude that Citibank, N.A., Inc., was not an actor of the state. Certainly, upon the court's review of the herein above mentioned presentation, it would find that the lower court did err in its ruling that the petitioner failed to allege a "sufficiently close nexus" between the challenged conduct and the state to permit the actions of the defendants to be treated as those of the state.

"Under color" of law has consistently been treated as congruent to the "state action" required under the fourteenth amendment; see Stevens v. Flick, 372 F. 2d 378, U.S. 920 (1967) Anderson V. Moses, 185 F. Supp. 727, 731 (S.D.N.Y. 1960).

Petitioner contends that judicial case law upon which the lower court relied, "Jackson v. Metropolitan Edison Co., 419 U.S. 345, 350 (1974), is inapplicable in the instant case. It has to do with "the mere fact that a business is subject to state regulation does not by itself convert its action into that of the state for purposes of the fourteenth amendment."

Petitioner is certain that the court would agree that there is a distinct difference between regulations and laws. Citibank, N.A., Inc., is incorporated under the laws of the state of New York and

conducts its banking and securities businesses under the color of laws of the state of New York. Therefore, an actor of the state.

42 U.S.C., Sec. 1983

Sec. 1983. Civil Action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom or usage of any state or territory, subject, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Under this section governing civil action for deprivation of rights, Plaintiff can generally sue to enforce federal statutory rights as well as constitutional rights. *Boxall v. Sequoia Union High School Dist.*, 464 F. Supp. 1104 (D.C. Cal. 1979).

WICKES SHORT

Drexel, Milken and Lowell Milken used the Boesky organization as a nominee to sell short, for Drexel's benefit, the common stock of Wickes Companies, Inc., in violation of sections

7 and 17(a)(1) of the Exchange Act, Rules 17a-5 and 17a-7 thereunder and regulations T and X.

Drexel, Milken, Lowell Milken and others committed fraudulent acts of wrongdoing in Wickes Companies, Inc., and C.O.M.B. Securities, prior to and after plaintiffs made his purchases of same. See Exhibit -2- (start p. #49), of plaintiff's "Objections, evidence and argument" (pursuant to section 10.5.4(B) of Debtors Disclosure Statement), dated August 04, 1994, filed in pro se office August 08, 1994. United States District Court, Southern District of New York, (SDNY). Re: "The Drexel Burnham Lambert Group, Inc., Debtors, Securities and Exchange Commission, plaintiff, 90 civ. 6954 (MP) chapter 11 case no. 90 B 10421 and No. 88 civ. 6209 (MP), (FGC), jointly administered. 28 U.S.C. Sec. 1332, Diversity and Supplement Jurisdiction Rule 4(e) Fed. R. Civ. P. New York State Longarm Statute. See below:

(28 U.S.C. Sec. 1391)

Background of 1988 Amendment

Longarm statutes proliferate under state law today, and all of these are adopted by rule 4(e) of the Federal Rules of Civil

Procedure for use in all federal actions and without regard to the basis on which subject matter jurisdiction rest in the action. That is, they apply not only in diversity cases, but also in federal question cases, admirality cases, cases in which the United States is a party, etc. (See Commentary c4-27 on Rule 4). When ever a state longarm statute applies, enabling the plaintiff to secure personal jurisdiction of the corporate defendant regardless of where the defendant has been served with process, a district in that state now qualifies IPSO FACTO as proper venue as against that defendant. New York state longarm statute, gives plaintiff personal jurisdiction over defendant BHC Securities, Inc. This court must reverse District Court in the matter of 28 U.S.C. Sec. 1332.The district court ruled that "Plaintiff failed to allege with specificity each defendant's state of incorporation and principal place of business. Accordingly, the court bases jurisdiction solely on 28 U.S.C. Sec. 1331." See pages 1 and 2 of the district court's memorandum and order dated December 9, 1996, for affirm.

Petitioner contends that the district court's ruling as mentioned, herein above is erroneous and has no basis in fact not law. See Appendix F-1 for affirm.

There are a total of four (4) defendants in the instant case, two (2) of which are corporations, namely 1- Citibank, N.A., Inc., 2- BHC Securities, Inc. See Appendix F-1 for their states of incorporation and principal places of business.

The Second Circuit Court of Appeals, rulings under diversity and supplemental jurisdiction is also erroneous and has no basis in fact nor law. See Appendix F-1 for affirm.

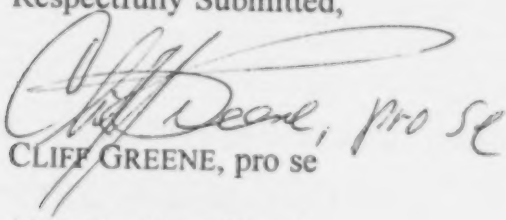
This court must reverse district court in the matter of 28 U.S.C. Sec. 1332.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter.[1]

Dated: January 06, 1998

Respectfully Submitted,



CLIFF GREENE, pro se

1333 President Street

Brooklyn, New York 11213

(718) 493-7028

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[1]If this court elects not to address the issues presented in this writ at present time, it is requested that the writ issue and that the matter be remanded to the court of appeals for redetermination in light of this court's opinions in *Murray, supra,* and *Sequram, supra.*

MANDATE

A-1

EDNY BKNY

95-CV-3678

Johnson, J.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the14th day of August, one thousand nine hundred and ninety-seven.

PRESENT:

HON. GUIDO CALABRESI,

HON. FRED I. PARKER,

Circuit Judges,

Filed

Aug. 14, 1997

HON. NEAL P. McCURN,

*District Judge.**

CLIFF GREENE,

Plaintiff-Appellant,

ORDER

v. # 97-7036

CITIBANK, N.A. CITIGOLD; CITICORP INVESTMENT SERVICES; BHC SECURITIES INC., Citibank's Agent; and CITIGOLD,

Defendants-Appellees.

Appearing for Appellant: CLIFF GREENE, *pro se*, Brooklyn, New York

Appearing for Appellee: JOHN F. OLSEN, New York, New York

UPON CONSIDERATION of this appeal from a judgment of the United States District Court for the Eastern District of New York (Johnson, J.), it is hereby

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*The Honorable Neal P. McCurn, Senior District Judge of the United States District Court for the Northern District of New York, sitting by designation.

- Mandate Issued: 11/5/97 -

ORDERED, ADJUDGED, AND DECREED that the judgment be and it hereby is AFFIRMED.

Cliff Greene appeals from the district court's granting of the defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Greene in his amended complaint brings a variety of claims under 42 U.S.C. § 1983, federal securities law, and state law. He alleges that he suffered substantial financial losses because of a decline in the value of securities of which he was the beneficial owner. He further alleges that those losses resulted from (1) the defendants' failure to file a claim on his behalf against Drexel Burnham Lambert, (2) their fraudulent misrepresentations to him concerning such claims, (3) their providing him with deceptive and fraudulent information concerning a class action lawsuit, and (4) their

concealment of information from the Securities Exchange Commission. For the following reasons, we conclude that Greene's arguments are meritless and the district court's dismissal of his claims was proper.

I. Securities Law Claims

Section 78j(b) and Rule 10b-5 require a plaintiff to show that an alleged securities fraud occurred "in connection with" the sale or purchase of securities. 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5(c). To satisfy that requirement, a plaintiff must prove "that the defendant's alleged fraud was 'integral to the purchase and sale of the security in question.' " *Flickinger v. Harold C. Brown & Co.*, 947 F.2d 595, 598 (2d Cir. 1991) (citation omitted). In *Flickinger,* we held that, where the plaintiff s purchase of the securities was completed before the alleged fraud occurred, the plaintiff "could not establish that the fraud was committed in connection with the purchase." *Id.*

The facts alleged by Greene concerned events that occurred subsequent both to his purchase of the securities and to their decline in value. Because the fraud Greene alleged did not occur "in connection with" his purchase of the securities, he has failed to state a claim under § 78j(b) or Rule 10b-5.

Greene's other claims under federal securities law also fail. We have held that no private right of action exists under 15 U.S.C. § 780(c)(1). *See Asch v. Philips, Appel & Walden, Inc.*, 867 F.2d 776, 777 (2d Cir. 1989) (per curiam). And Rule 15c1-2 simply defines the phrase "manipulative, deceptive, or other fraudulent device or contrivance" for purposes of that section. It does not provide an independent legal basis for Green's claims. *See* 17 C.F.R. § 240.15c1-2.

II. Section 1983 Claims

Greene argues that the defendants are state actors because they are registered with a state entity, the Investors

Protection and Securities Bureau of the New York State Attorney General's Office, and are subject to state and federal regulation. The Supreme Court has held that "[t]he mere fact that a business is subject to state regulation does not by itself convert its action into that of the state for purposes of the Fourteenth Amendment." *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 350 (1974). The district court properly held that Greene has failed to allege a "'sufficiently close nexus'" between the challenged conduct and the state to permit the actions of the defendants to be treated as those of the state. *See Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982) (citation omitted).

III. Diversity and Supplemental Jurisdiction

We conclude that the district court did not err in holding that it lacked diversity jurisdiction over Greene's state law causes of action. He alleged that he is a New York resident and that three of

the defendants are New York corporations. He clearly has not shown the "complete diversity" that is required under 28 U.S.C. § 1332. *See, e.g., Doctor's Assocs., Inc. v. Distajo,* 66 F.3d 438, 445 (2d Cir. 1995), *cert. denied,* 116 S. Ct. 1352 (1996). Because the district court properly dismissed all of Greene's federal claims and lacked diversity jurisdiction, it did not abuse its discretion in declining to exercise jurisdiction over his supplemental state law claims. *See* 28 U.S.C. § 1367; *Purgess v. Sharrock,* 33 F.3d 134, 138 (2d Cir. 1994).

We have examined all of Greene's arguments and find them to be without merit.

The judgment of the district court is affirmed.

/S/
Hon. Guido Calabresi

/S/
Hon. Fred I. Parker

Circuit Judges,

/S/
Hon. Neal P. McCurn

District Judge

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

CLIFF GREENE,

95 CV 3678

Plaintiff,

- against - MEMORANDUM and ORDER

CITIBANK, N.A.; CITIGOLD;
CITICORP INVESTMENT SERVICES;
and BHC SECURITIES, INC.,

Defendants.

----------X

A P P E A R A N C E S:

CLIFF GREENE

1333 President Street

Brooklyn, New York 11213

Plaintiff, Pro se

FRANCIS S. CHLAPOWSKI

Orrick, Herrington & Sutcliffe

666 Fifth Avenue

New York, New York 10103-0001

Attorney for Defendants

JOHNSON, District Judge:

Cliff Greene ("Plaintiff" or "Mr. Greene") appearing pro se has filed an amended complaint for damages alleging, inter alia, that Defendants violated federal securities laws and 42 U.S.C. § 1983. Plaintiff also claims common law fraud and breach of fiduciary duty. Plaintiff asserts jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1332. Plaintiff has failed to allege with

specificity each Defendants' state of incorporation and principal place of business. Accordingly, the Court bases jurisdiction solely on 28 U.S.C. § 1331.

Defendants have filed a motion to dismiss the amended complaint pursuant to Fed. R. Civ. P. 12(b)(6) and for failure to state a claim upon which relief can be granted and 9(b) for failure to plead fraud with particularity. For the reasons set forth herein, Defendants' motion to dismiss pursuant to Rule 12(b)(6) is granted.

BACKGROUND

In 1984, Plaintiff maintained an account with Merrill, Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") holding 100,000 shares of Wickes Companies Inc., common stock warrants ("Wickes warrants"). In 1985, Plaintiff transferred his account to Defendant

Citibank-Focus/Citigold.[1] Plaintiff then purchased an additional

---

[1] 1 At the time the events in this case occurred Citibank-Focus was a service of Citibank, N.A. ("Citibank") that allowed customers to maintain a bank account with Citibank and a securities account with Citicorp Financial Services, Inc., now known as Citicorp Investment Services ("CIS"), a broker/dealer subsidiary of Citibank. The name of the Citibank-Focus service was later changed to Citigold. BHC Securities, Inc. ("BHC")

was the clearing broker for CIS. A clearing broker provides operational services for a customer's account. See Fine v. Bear Stearns & Co., 765 F. Supp. 824, 826 n.2 (S.D.N.Y. 1991). Mr. Greene has filed claims against Citibank, CIS, Citigold and BHC ("Defendants").

60,000 shares of Wickes warrants as well as 3,000 shares of C.O.M.B. Co. common stock.

Plaintiff's claims arise from events related to the merger of Wickes with WCI Holdings Corporation ("WCI") and a prior merger offer made by WIX Industries, Inc. ("WIX"). The merger with WCI was effected April 13, 1989. It is undisputed that in the months leading up to the merger and following its completion, the value of Wickes warrants dropped precipitously. Mr. Greene claims that during this period Drexel, Burnham, Lambert Inc. ("Drexel") manipulated the price of Wickes warrants and C.O.M.B. Co. common stock for Drexel's benefit. When Drexel filed for bankruptcy ("Drexel Case") Mr. Greene believed he had a claim against Drexel. Mr. Greene asked Citibank if it would be filing claims in the Drexel Case on behalf of their customers. Citibank informed Mr. Greene that they would

not file such claims. On November 15, 1990, Mr. Greene, pro se, filed a proof of claim in the Drexel Case. District Judge Milton Pollack denied the claim on the merits. Mr. Greene now asserts that contrary to Citibank's representations to him, it did file claims on behalf of its customers in the Drexel Case. Mr. Greene claims that Citibank's actions violated federal securities laws and 42 U.S.C. § 1983. In addition, Mr. Greene claims Citibank committed common law fraud and breach of fiduciary duty.

Mr. Greene also makes claims against Defendants based on litigation that occurred as a result of Wickes' merger with WCI and the merger proposal made by WIX. In August 1990, the Delaware Chancery Court approved a settlement in a class action shareholder litigation suit involving a class of Wickes shareholders and warrantholders, including Mr. Greene. At the same time, in the United States

District Court, Central District of California, parties settled a separate class action suit involving only Wickes shareholders. The claims administrator for both settlements was Gilardi & Co. ("Gilardi") located in Larkspur, California.

On or about September 20, 1990, Gilardi sent a Notice of Pendency of Class Action Settlement to BHC. In response, BHC forwarded to Gilardi the names and addresses of beneficial owners for whom BHC held securities of Wickes common stock or warrants during the relevant time period. Mr. Greene's name and address was among those forwarded to Gilardi. As a result, Mr. Greene received a copy of the Notice of Pendency and a Proof of Claim and Release form. The Notice of Pendency informed Mr. Greene that as part of the settlement, warrantholders' claims were being dismissed from the action, ostensibly because these claims were being prosecuted in a separate

action in Delaware State Court. Mr. Greene claims that BHC committed securities fraud and common law fraud by sending his name to Gilardi since his claims were dismissed from the class action. Plaintiff contends that BHC's purpose in sending his name to Gilardi was to induce him to file a claim and forfeit his rights against BHC or Citibank.

In July 1995, Plaintiff wrote to the Securities Exchange Commission ("SEC") requesting an investigation into his claims against Citibank. Citibank responded to the SEC's request for information by sending them documents to show that they had sent Mr. Greene's name and address to Gilardi. The documents that Citibank sent to the SEC included the Notice of Pendency of Settlement and a copy of an envelope addressed to BHC with Gilardi's return address. Mr. Greene claims that Citibank "superimposed" this return address label on the documents and that

the Notice of Pendency was in fact sent to BHC by the Delaware Chancery Court. Mr. Greene alleges that Citibank's response to the SEC was fraudulent.

DISCUSSION

When considering a motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim, a district court must accept all well-pled material facts as true, and all reasonable inferences are drawn and reviewed in a light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Leeds v. Meltz, 85 F.3d 51, 53 (2d Cir. 1996). In addition, the Court may consider documents attached to the complaint as an exhibit or incorporated in it by reference, to matters of which judicial notice may be taken, or to documents either in plaintiff's possession or of which plaintiff had knowledge and relied on in bringing suit. Brass v. American Film

Technologies, 987 F.2d 142, 150 (2d Cir.1993). The motion to dismiss will then be granted only when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Fields v. Soloff, 920 F.2d 1114, 1118 (2d Cir. 1990)(quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

1. Claims Based on the Drexel Case

A. 42 U.S.C. § 1983

Plaintiff asserts that Defendants deprived him of his Fourteenth Amendment right to due process of law in violation of 42 U.S.C. § 1983. In order to prevail on this claim, Plaintiff must establish that (1) Defendants acted "under color of" state law; (2) Plaintiff has a property or liberty interest protected by the Fourteenth Amendment; (3) Defendants intentionally deprived Plaintiff of that interest; and (4) the Constitution guarantees Plaintiff

procedural rights above the ordinary state law remedies. See, e.g., Hudson v. Palmer, 468 U.S. 517, 530-33 (1984); Costello v. Town of Fairfield, 811 F.2d 782, 784 (2d Cir. 1987). The Fourteenth Amendment to the United States Constitution affords no protection from private conduct, no matter how offensive such conduct may be. Burton v. Wilmington Parking Auth., 365 U.S. 715, 722 (1961); Shelley v. Kraemer, 334 U.S. 1, 13 (1948). Liability under Title 42 U.S.C. § 1983[2] attaches only to

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[2] Title 42 U.S.C. § 1983 provides in full: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

conduct that occurs "under color of" state law. Monroe v. Pape, 365 U.S. 167, 172 (1961). Hence, Plaintiff's § 1983 claim can survive only if (1) Defendants could be described in all fairness as state actors alleged and (2) the deprivation "resulted from the right exercise of a or privilege having its source in state authority." Luger v. Edmonson Oil Co., 457 U.S. 922, 939 (1982). The purpose of the requirement is to assure that constitutional standards are invoked only when it can be said that the State is responsible for the specific conduct of which the plaintiff complains. Luger, 457 U.S. at 934-937.

In the typical state action case involving a private party, the private party takes the decisive action that causes harm to the

plaintiff, and the question is whether the State was sufficiently implicated to treat the action as state action. National Collegiate Athletic Ass'n v.Tarkanian, 488 U.S. 179, 192 (1988). The inquiry is "necessarily fact-bound," Luger, 457 U.S. at 939, and is informed by several factors:

> 1) There is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself . . . . 2) [The State] has exercised coercive power or has provided such significant encouragement, either

> overt or covert, that the choice must in law be deemed to be that of the State . . . 3) The private entity has exercised powers that are traditionally the exclusive prerogative of the State.

Blum v. Yaretsky, 457 U.S. 991, 1004-05 (1982).

In the instant case, Plaintiff's complaint asserts that there is a sufficiently close nexus between the State and the challenged action of the regulated entity. Plaintiff claims that Defendants are acting under color of state law because they are registered with the Investors Protection and Securities Bureau of the New York State Attorney General's Office.

The Supreme Court, in determining whether a private entity was a state actor has held that "[t]he mere fact that a business is subject to state regulation does not by itself convert its action into that of the state for purposes of the Fourteenth Amendment." Jackson v. Metropolitan Edison Co., 419 U.S. 345, 350 (1974). Instead, a plaintiff must show that there is a "'sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of latter may be fairly treated as that of the State itself.'". Blum v. Yaretsky, 457 U.S. 991, 1004 (1982)(quoting Metropolitan Edison, 419 U.S. at 350).

The Court finds that Defendants did not act under color of state law when it filed customer claims in the Drexel Case. The fact that Defendants were registered with a state entity does not convert their every act into

state action. A decision that a private entity that registers with a state office or state agency thereby becomes a state actor would undermine the purpose behind the state action requirement.

Because this Court finds that the alleged violations in this case did not occur under color of state law, a jurisdictional prerequisite to a § 1983 action, this Court will not address the rest of the § 1983 requirements. Defendants' motion to dismiss the § 1983 claim is granted.

B. Federal Securities Fraud Claims

Plaintiff claims that Defendants violated section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) and Rule 10b-5, 17 C.F.R. § 240.10b-5, when it failed to file claims on his behalf in the Drexel Case. Section 10(b) makes it unlawful for anyone to use any manipulative or deceptive device "in connection with the purchase or sale of any

security." Defendants claim that Plaintiff has failed to allege the acts took place "in connection with the purchase or sale of any security." In addition, Defendants move to dismiss this cause of action for failure to allege fraud with particularity and because the statute of limitations has run. Because the Court finds that Plaintiff fails to state a claim under section 10(b), the Court need not address any other alleged bases for dismissal.

It is well established in this circuit that the "in connection with" the purchase/sale of securities requirement of 10(b) requires using a device "'of a sort that would cause reasonable investors to rely thereon, and [therefore] cause them to purchase or sell a corporation's securities.'" Bosio v. Norbay Sec. Inc., 599 F. Supp. 1563, 1566 (E.D.N.Y. 1985)(quoting SEC v. Texas Gulf Sulfur, 401

F.2d 833, 860 (2d Cir. 1968)(en banc), cert. denied, 394 U.S. 976 (1969)). The statute requires proof that the defendant's alleged fraud was "'integral to the plaintiff's purchase and sale of the security.'" Flickinger v. Harold C. Brown, 947 F.2d 595, 598 (2d Cir. 1991)(quoting Pross v. Katz, 784 F.2d 455, 459 (2d Cir. 1986)). The "fraud practiced must have been prior to or contemporaneous with the sale of securities." Kogan v. National Bank of N. Am., 402 F. Supp. 359, 361 (E.D.N.Y. 1975).

In this case the sale of securities occurred in 1984 and 1985. Plaintiff alleges that Defendants violated section 10(b) when they failed to file a claim for him in the Drexel Case. The last day for filing a claim in the Drexel Case was November 15, 1990. The alleged fraud did not occur before or contemporaneously with Plaintiff's

purchase of securities. In addition, Plaintiff does not claim and the Court does not find that the alleged fraud was in any way integral to his purchase of securities in 1984 and 1985. Plaintiff has therefore failed to state a claim based on section 10(b).

Plaintiff next claims violations of section 15(c)(1) of the Securities Exchange Act, 15 U.S.C. § 78J(c)(1) and Rule 15c1-2, 17 C.F.R. § 240.15c1-2, which prohibit fraud and manipulation by broker-dealers involved in over-the-counter transactions on exchanges where the broker-dealer is not a member. Asch v. Philips, Appel & Walden, Inc., 867 F.2d 776, 777 (2d Cir.), cert. denied, 493 U.S. 835 (1989). The Court of Appeals for the Second Circuit has held that section 15(c)(1) does not create a private right of action. Asch, 867 F.2d at 777. See also Komanoff v. Mabon, Nugent & Co., 884 F. Supp. 848, 857-58

(S.D.N.Y. 1995)(denying private cause of action under Rule 15c and citing Asch). Plaintiff's claims based on section 15(c)(1) and Rule 15c1-2 are therefore dismissed for failure to state a claim.

2. Claims Based on the Wickes Litigation

A. Citicorp Investment Services' Response to the SEC

Plaintiff alleges that Defendants violated section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) and Rule 10b-5 when it responded to the SEC's request for information regarding Mr. Greene's complaint. The Court fails to see how Defendants' response to the SEC would satisfy the "in connection" requirement described above. Defendants' response was not an integral part of Plaintiff's purchase of securities and in no way encouraged him to purchase any securities. Plaintiff's claim

must be dismissed for failure to state a claim upon which relief can be granted.

The Plaintiff makes other claims based on state law, including that: 1) Defendants fraudulently "superimposed" a return address label on certain documents sent to the SEC; 2) Defendants committed common law fraud and breach of fiduciary duty when they informed him they were not filing claims on behalf of customers in the Drexel Case; and 3) Defendants committed common law fraud in their response to the SEC. Because Plaintiff has failed to state a claim based on federal law upon which releif can be granted, the Court declines to exercise its pendent jurisdiction over these state law claims.

CONCLUSION

For the reasons stated herein, the Plaintiff's claims are dismissed because he has failed to state a claim upon which relief can be granted.

SO ORDERED.

/s/ Sterling Johnson, Jr.
U.S.D.J.

Dated: December 9, 1996
Brooklyn, New York

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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CLIFF GREENE,

Plaintiff,

Filed in Clerk's Office

U.S. District Court E.D.N.Y.

Dec. 19, 1996

P.M. _____

Time A.M. __

JUDGMENT

95-CV-3678 (SJ) (ASC)

-against

CITIBANK, N.A.; CITIGOLD;

CITICORP INVESTMENT SERVICES,

AND BHC SECURITIES, INC

Defendants.

----------X

A memorandum and order of the Honorable Sterling Johnson, United States District Judge, having been filed on December 13, 1996, granting the defendants' motion to dismiss the amended complaint pursuant to Federal Rule of Civil Procedure 12 (b) (6) for failure to state a claim upon which relief can be granted; it is

ORDERED and ADJUDGED that the plaintiff take nothmg of the defendants; and that the defendants' motion to dismiss is granted.

Dated: Brooklyn, New York

December 16, 1996

/s/

ROBERT C. HEINEMANN
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

UNITED STATES COURT HOUSE

40 FOLEY SQUARE

NEW YORK 10007

GEORGE LANGE III

CLERK

At a stated term of the United States Court of Appeals for the Second Circuit held at the United States Courthouse, Foley Square, 1n the City of New York, on the sixteenth day of October one thousand nine hundred and ninety-seven.

Cliff Greene

v

Citibank, N.A.

Dkt No: 97-7036

Filed

Oct. 16, 1997

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by the appellant pro se Cliff Greene.

> Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED.**

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

FOR THE COURT

GEORGE LANGE III, Clerk

By: /S/

Beth J. Meador

Administrative Attorney

p o ccc

inbancdn_frm

APPENDIX E

AMENDMENT XIV TO UNITED STATES CONSTITUTION CITIZENSHIP RIGHTS NOT TO BE ABRIDGED

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

BEST AVAILABLE COPY

6

United States District Court

Eastern District of New York

CLIFF GREENE, pro se, Plaintiff,	CV 95 3678
-against-	95 Civ. JOHNSON, J.
CITIBANK, N.A., CITIGOLD, CITICORP INVESTMENT SERVICES AND BHC SECURITIES, INC., (CITIBANK'S AGENT), Defendants.	COMPLAINT
	PLAINTIFF DEMANDS TRIAL BY JURY

1. At all times hereinafter mentioned, plaintiff was and still is a resident of 1333 President Street, County of Kings, Brooklyn, New York 11213.

DEFENDANTS

2. Defendant, Citibank, N.A. ("Citibank, Citigold"), is a corporation incorporated under the laws or the state of New York and having a main office at 666 Fifth Avenue, 5th Floor, New York, New York 10103-0013. Citigold is a service of Citibank, which provides banking and borrowing services, and share the same address.

3. Citibank Investment Services, a Citibank company, with an office at One Court Square, 24th Floor, Long Island City, New York 11120.

4. BHC Securities, Inc. is a corporation incorporated under the laws of the state of Delaware, and having a main office at One Commerce Square, 2005 Market Street, Philadelphia, Pennsylvania 19103.

ORIGINAL
Filed-9-08-95

1-0
F-1

US BANKRUPTCY COURT SOUTH[illegible] DISTRICT OF N.Y.
CASE NO 90 B 10421 (FGC)

FORM B

FILED WITH THE UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

CLAIMS FOR DIVIDENDS AND BOND INTEREST

DREXEL 00006735

DO NOT USE THIS FORM IF YOU MAINTAINED A CUSTOMER ACCOUNT AT DREXEL

CITIBANK NA ROC UNIT
MARIO SPOTI
20 EXCHANGE PLACE 18TH FL ZONE 1
NEW YORK N.Y. 10043

Claim Number _____
Date Received _____

R256 908

AMBERT INCORPORATED

NOTE: BEFORE COMPLETING THIS CLAIM FORM, BE SURE TO READ CAREFULLY THE ACCOMPANYING INSTRUCTION SHEET.

We hereby make claim on you for the following:

SECURITY DESCRIPTION
MAGNETEK INC. PFD

CUSIP NUMBER
559424205

RECORD DATE:

PAYABLE DATE:
7/31/86

EX-DATE:

REDEEMABLE DATE:

SETTLEMENT DATE
5/28/86 & 6/18/86

DATE OF YOUR DELIVERY
10/7/86

NUMBER OF SHARES/BONDS
12500

RATES: SHARE/BOND
3.8125

AMOUNT DUE US
47,656.25

SHARES DUE US:

CASH IN LIEU:

DIVIDEND ACCOUNT NUMBER

G-1

__x__ YOU WERE FAILING TO DELIVER US
_____ WERE HELD ON RECORD DATE:
_____ COPY OF CERTIFICATE ATTACHED
_____ OUR STOCK LOAN TO YOU
_____ PROOF FORM DIVIDEND DISBURSEMENT AGENT (DDA) ATTACHED
_____ CERTIFICATE PRESENTED

CERTIFICATE NUMBERS:

1-7

RECEIVED
NOV 14 1991
U.S. BANKRUPTCY COURT
S DIST OF NEW YORK

REGISTERED IN THE NAME OF:

In consideration of your making this payment to us we shall hold you free from any future claim you may receive for this stock, dividend or interest payment.

1-3
G-1
DREXEL
CUSTOMER CLAIMS
604

IT IS A VIOLATION OF FEDERAL LAW TO FILE A FRAUDULENT CLAIM. CONVICTION CAN RESULT IN A FINE OF NOT MORE THAN $5,000 OR IMPRISONMENT FOR NOT MORE THAN FIVE YEARS OR BOTH.

THE FOREGOING CLAIM IS TRUE AND ACCURATE, TO THE BEST OF MY INFORMATION AND BELIEF.

Date 11-14-90 Name of Claimant CITIBANK N.A.

Name of Person Completing Claim EGON G. CARTER
[Print]

[Signature]

Telephone No. (212) 825-2068

This Claim Form must be completed and either (a) mailed promptly, together with supporting documentation, etc. to:

Drexel Customer Claims
c/o The United States Bankruptcy Court for the Southern District of New York
P.O. Box 64
Bowling Green Station
New York, New York, 10274

or (b) delivered to the Clerk, U.S. Bankruptcy Court by hand delivery or courier (but not by U.S. Mail) to:

Clerk, U.S. Bankruptcy Court
Room 614
Old Custom House
One Bowling Green
New York, New York 10004

G-2

2-7

2-3

CITICORP CITIBANK

Citibank, N.A.
A subsidiary of
Citicorp

Reorganization Unit
20 Exchange Place/18th Floor
New York, NY
10043

November 6, 1990

OT-33668

Drexel Burnham
60 Broad Street
New York, NY 10004-2367

Att: Mr. Harry Carlson
15th Floor

Re: Magnetek Inc. Pfd
CUSIP # 559424-205

Gentlemen:

Our mutual account, Pilgrim Fund, account 16-24200-0-1 made the following purchases on the above referenced security:

1. T/D 5-20-86 S/D 5-28-86 6250 shares vs. $728,000.00.
2. T/D 6-11-86 S/D 6-18-86 6250 shares vs. $721,875.00.

In each instance you delivered due bills in lieu of the stock vs. payment as your firm was awaiting receipt of a "Sophisticated Investor" letter from Pilgrim Fund.

This letter was provided on September 2, 1986 and on October 7, 1986 we presented due bills totalling 12500 shares. At that time we received from you 12500 shares certificate #010 registered in the name of our nominee Gerlach & Company dated September 25, 1986.

Pilgrim fund is now claiming that they never received the July 1986 cash dividend on these 12500 shares in the amount of $47,656.25.

Therefore, we hereby claim from you on behalf of Pilgrim Fund the July 1986 cash dividend on the 12500 shares purchased from you in the amount of $47,656.25.

G-3

3-7

3-3

CASE NO 90 B 10421 (PBC) DEBTORS OF N.Y.

FORM B

CLAIMS FOR DIVIDENDS AND BOND INTEREST

FILED WITH THE UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

DO NOT USE THIS FORM IF YOU MAINTAINED A CUSTOMER ACCOUNT AT DREXEL

DREXEL 00006740 V

CITIBANK NA. ROC UNIT
20 EXCHAGE PLACE 18TH FLOOR ZONE 1
NEW YORK N.Y. 10043
ATT; MARO SPOTI

Claim Number _____

Date Received _____

R256 908 AMBERT INCORPORATED

NOTE: BEFORE COMPLETING THIS CLAIM FORM, BE SURE TO READ CAREFULLY THE ACCOMPANYING INSTRUCTION SHEET.

We hereby make claim on you for the following:

SECURITY DESCRIPTION
PLAYTEX HOLDINGS PFD SER B.

CUSIP NUMBER
728132309

RECORD DATE:
10/5/87

PAYABLE DATE:
10/15/87

EX-DATE:

REDEEMABLE DATE:

SETTLEMENT DATE
10/1/87

DATE OF YOUR DELIVERY
10/1/87

NUMBER OF SHARES/BONDS

RATES: SHARE/BOND
.875

AMOUNT DUE US
$82,250.00

SHARES DUE US:

CASH IN LIEU:

DIVIDEND ACCOUNT NUMBER

_____ YOU WERE FAILING TO DELIVER US

_____ OUR STOCK LOAN TO YOU

__x__ WERE HELD ON RECORD DATE:

_____ COPY OF CERTIFICATE ATTACHED

_____ PROOF FORM DIVIDEND DISBURSEMENT AGENT (DDA) ATTACHED

_____ CERTIFICATE PRESENTED

CERTIFICATE NUMBERS:

4-7

RECEIVED
NOV 14 1990
U.S. BANKRUPTCY COURT
SO. DIST. OF NEW YORK

REGISTERED IN THE NAME OF:

In consideration of your making this payment to us we shall hold you free from any future claim you may receive for this stock, dividend or interest payment.

1-4
E-1

DREXEL
CUSTOMER CLAIMS
606

IT IS A VIOLATION OF FEDERAL LAW TO FILE A FRAUDULENT CLAIM. CONVICTION CAN RESULT IN A FINE OF NOT MORE THAN $5,000 OR IMPRISONMENT FOR NOT MORE THAN FIVE YEARS OR BOTH.

THE FOREGOING CLAIM IS TRUE AND ACCURATE, TO THE BEST OF MY INFORMATION AND BELIEF.

Date 11-14-90 Name of Claimant CITIBANK N.A.

Name of Person Completing Claim EGON G. CARTER
[Print]

[Signature]

Telephone No. (212) 825-2068

This Claim Form must be completed and either (a) mailed promptly, together with supporting documentation, etc. to:

Drexel Customer Claims
c/o The United States Bankruptcy Court for the Southern District of New York
P.O. Box 64
Bowling Green Station
New York, New York, 10274

or (b) delivered to the Clerk, U.S. Bankruptcy Court by hand delivery or courier (but not by U.S. Mail) to:

Clerk, U.S. Bankruptcy Court
Room 614
Old Custom House
One Bowling Green
New York, New York 10004

C-5

5-7

2-4

CITIBANK

of. 42747.5.4.

November 8, 1990

Drexel Burnham
60 Broad Street
New York, NY 10004-2367

Attention: Mr. Harry Carlson
15th Floor

RE: Playtex Holdings PFD Series B
Cusip # 728132-309 R/D 10/5/87 P/D 10/15/87

Gentlemen:

Our mutual account, Pilgrim Fund account 16-20985-0-1, purchased from your goodselves 94000 shares of the above referenced security vs $2,514,500.00 T/D 9/24/87 SD 10/1/87/

On 10/1/87, you delivered the following certificates registered in the name of Drexel Burnham Lambert dated 9/16/87:

B-34/37	4	@	10,000 each
B-38	1	@	20,000
B-39	1	@	4,000
B-40	1	@	30,000

These certificates were submitted for transfer and reregistered into our nominee Gerlach & Co dated 10/12/87 as follows:

B-47/55	9	x	10,000 each
B-56/58	3	x	1,000 each
B-59	1	x	500
B-60/64	5	x	100 each

Since the 94,000 shares were not put into Gerlach & Co until 10/12/87, after the 10/5/87 record date, we did not receive the cash dividend payable 10/15/87.

Therefore, we hereby claim from you on behalf of Pilgrim Fund the 10/15/87 cash dividend on these 94,000 shares in the amount of $82,250.00. Please forward your payment to:

Citibank N.A
Roc Unit
20 Exchange Place
18th floor/zone 1
New York, NY 10043

Attention: Xavier Zambrano, AVP

Please contact me at (212) 825-5660 with any questions regarding this claim.

Sincerely,

Mario Spoleti

G-7

7-7

4-4